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SIPDIS

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DEPT FOR WHA/AND, EB/TPP/IPE, WHA/EPSC
COMMERCE FOR 4331/MAC/WH/MCAMERON
DOC FOR J. BOGER
USTR FOR BWILSON, BHARMAN
USPTO FOR INTERNATIONAL - JACKIE MORALES
CUSTOMS AND BORDER PROTECTION FOR J. TODD REEVES

SENSITIVE

E.O.: N/A

TAGS: [KIPR](#) [ECON](#) [EINV](#) [ETRD](#) [PE](#)

SUBJECT: SUCCESSFUL IPR CONFERENCE HIGHLIGHTS BORDER
MEASURES

1. (SBU) Summary. Post, in collaboration with the U.S. Patent and Trade Office and U.S. Customs and Border Protection, hosted a two-day conference October 24-25, highlighting the urgent need for Peru to better protect intellectual property rights. During the conference, 70 officials from Peruvian Customs/SUNAT and Indecopi (Peru's Intellectual Property Rights Administrator) heard presentations from private sector and government officials on how Peru's IPR system functions, the dire situation with optical disc piracy in Peru, an overview of the WTO TRIPS Agreement, and best practices from U.S. Customs on cooperation efforts and risk analysis. After two days, it became apparent that the Peruvian entities responsible for protecting IPR, including Customs/SUNAT, Indecopi, police, and the judiciary, need to improve cooperation to achieve desired results. Additionally, local Customs officials are woefully ignorant of Peru's customs obligations under the TRIPS agreement, foreshadowing possible difficulties with the implementation of TRIPS plus customs measures under a U.S.-Andean Free Trade Agreement. End Summary.

Helping Customs and Indecopi Understand
Why IPR Really Matters

2. (U) Since 2001, USTR has listed Peru on its Special 301 Priority Watch List. Piracy can be found in all sectors, including textiles and apparel, pharmaceuticals, software, literature, music and movies/media. Optical disc piracy is rampant; 98 percent of the music industry, 80 percent of the motion picture industry and 55 percent of the software industry is pirated in Peru. Imports of optical discs totaled 130 million in 2004 -- Indecopi officials expect this amount to increase to approximately 140 million units in 2005. 85 percent of blank optical discs imported exhibit the name of Princo, manufactured in Taiwan. Of the total 130 million imported discs, only 10 million CDs and DVDs are used for legitimate purposes, with the rest used to produce pirated products.

3. (U) Because Peru's optical disc piracy levels continue to worsen annually, Post and the U.S. Patent and Trade Office co-sponsored a training seminar for Peruvian officials entitled "The Application of Intellectual Property Rights: the Case of Optical Discs," October 24-25 in Lima. Customs officials from Lima's Port of Callao, six customs officials from key border areas including Tacna, Arequipa, Iquitos and Tumbes, and officials from Indecopi attended the conference, where they heard presentations explaining why Peru needs to improve its efforts to protect IPR.

4. (U) Experts from both the public and private sector emphasized the need to eliminate optical disc piracy. In addition to noting how IPR protections will encourage creative thinking and the development of new products, particularly in Peru's robust software industry, Richard Llaque, Head of the Tax Control Office at SUNAT, noted that Peru loses between \$15-20 million in tax revenue annually due to piracy of optical discs. The loss of revenue, he emphasized, means that the GOP does not have the money to improve social development programs or build infrastructure, such as improving the Port of Callao.

5. (U) Jacqueline Morales from the U.S. Patent and Trade Office then reviewed the WTO TRIPS Agreement, highlighting sections 51-60, which detail member countries' customs obligations. During her presentation, several Customs officials noted that, despite provisions for Ex Officio action under TRIPS, Peruvian Customs is prohibited under the law from taking such action.

Emphasis on Border Measures

16. (U) After laying the foundation, the presentations became more specific, detailing U.S. Customs efforts and practices in its daily fight against shipments of contraband and IPR violations. J. Todd Reeves, Legal Advisor at U.S. Customs and Border Protection, explained best practices in the United States, highlighting the need for agencies to share information, how to establish a database of information on patents and trademarks, and why a good relationship with the private sector can make it easier to stop fakes. Kimberly Wachtel, Import Specialist with U.S. Customs, reviewed how to conduct targeted risk analysis, noting that Customs officials need to pay attention to details, such as where a product is imported from, whether the company is one that is suspect, and how bad packaging can signal a contraband shipment.

17. (U) Local Customs and Indecopi officials responded well to these presentations, asking questions about how they can better improve their efforts. We also engaged participants in a discussion on how they conduct their searches locally; most officials admitted that they had never conducted a search before because they were unaware of telltale signs of IPR infringements or contraband. Customs officials, who appreciated the information, noted that they will take the information back to headquarters and incorporate some of the U.S. best practices into their daily activities

Inherent Tension between Customs and Indecopi

18. (SBU) During our discussion on a day in the life of a local Customs officers, several participants noted that in Peru, Customs does not have the authority to determine whether a good is legitimate or a pirated copy. Instead, that responsibility remains with Indecopi officials, who must give their official approval before Customs can seize a shipment of allegedly pirated goods. One Customs official noted that it often takes Indecopi several days to return their call or make a determination; often too late, as Customs turns over goods to the importer within 48 hours. For example, one Customs agent who works at courier office at the Jorge Chavez Airport in Lima explained that she often receives shipments of optical discs on a spindle -- most of these discs are "software" programs. She noted that she believes these discs, which do not come in a jewel case or in any official packaging, to be pirated. However, as there is no Indecopi official at the airport to determine the legitimacy of the shipment, she cannot detain the shipments without cause, letting the pirated product enter the market.

19. (SBU) Several Indecopi officials noted that Indecopi is working with SUNAT to place officials at the ports. One agent was recently assigned to the Port of Callao. Martin Moscoso, Director of Indecopi's Office of Derechos de Autor, explained that while Indecopi is willing to give Customs/SUNAT officials Ex Oficio ability, SUNAT agents do not have immunity under Peruvian law to protect them if they detain a legitimate shipment. Customs/SUNAT officials have, he stated, rejected their ability to make immediate determinations, even though they have the ability to access Indecopi's records of Peruvian right holders.

Comment

110. (SBU) During the two day conference, several issues became apparent. In addition to continuing tension and lack of communication and understanding between Customs and Indecopi officials, we noted that many of the Customs agents were unaware of Custom's obligations under the TRIPS Agreement. Peruvian Customs officials receive minimal training before becoming an agent; most of our participants from Customs could not explain what TRIPS was, let alone describe how Customs is meeting its TRIPS obligations. This phenomenon foreshadows potential problems in the future, as Peru draws near to the conclusion of FTA negotiations with the United States. Under our FTA trade capacity building measures, we will look to educate Peruvian Customs officials on their WTO TRIPS obligations and support them as they move to implemented TRIPS-plus commitments under an FTA.

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